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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 86

CARLEY & HAMILTON, INC.; EDWARD MALDE, DOING BUSINESS AS A. B. C. TRANSFER & STORAGE COMPANY; S. BRIZZOLARA, ETC., ET AL., APPELLANTS,

vs.

FRANK G. SNOOK, AS CHIEF OF THE DIVISION OF MOTOR VEHICLES, STATE OF CALIFORNIA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED MAY 11, 1929

(34,202)

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 2274. In Equity

CARLEY & HAMILTON, INC., EDWARD MALDE, Doing Business as A. B. C. Transfer & Storage Company; S. Brizzolara, Doing Business as S. Brizzolara Draying Company; J. A. Clark, Doing Business as J. A. Clark Company; H. Jacobs, Doing Business as Commercial Drayage Company; Emmons Draying & Rigging Company, Inc., Farnsworth & Ruggles Draying & Rigging Company, Inc.; Fred C. Gerdes, Doing Business as Fred C. Gerdes Moving and Storage Company; King & Company, Inc., Joe Mangini Draying Company, Inc., H. T. Porter, J. Coughlin, and E. Coughlin, Doing Business as Red Line Transfer Company, O. Sharetg, G. Sharetg and A. Sharetg, Doing Business as Scharetg & Sons; L. Goldman and L. Levy, Doing Business as Schussler & Company; M. Worth, Doing Business as C. A. Worth Company; United Draying & Rigging Company, Inc.; Becker Storage Company, Inc., J. Haake, Doing Business as Empire Express; C. C. Miller, Doing Business as Miller Moving & Storage Company; Owl Transfer Company, Inc., Pierce Rodolph, Inc., Union Transfer Company, Inc., A. W. Reid, Doing Business as Reid's Express, Plaintiffs,

vs.

FRANK G. SNOOK, as Chief of the Division of Motor Vehicles, State of California, Defendant

BILL OF COMPLAINT—Filed Dec. 29, 1929

[fol. 2] To the Honorable Judges of the District Court of the United States for the Northern District of California, Southern Division, sitting in equity:

The plaintiffs bring this complaint on behalf of themselves and on behalf of all persons, firms, associations and

corporations similarly interested or situated and entitled to receive the benefits herein, against Frank G. Snook, as Chief of the Division of Motor Vehicles of California, Defendant; and thereupon plaintiffs complain of the said Frank G. Snook, as Chief of the Division of Motor Vehicles of California, Defendant, and show unto your Honors as follows:

I

That—

The Plaintiff Carley & Hamilton, Inc., operates 35 motor Vehicles;

The Plaintiff Edward Malde doing business as A. B. C. Transfer & Storage Company, operates 8 motor vehicles;

The Plaintiff S. Brizzolara, doing business as S. Brizzolara Draying Company, operates 4 motor vehicles;

The Plaintiff J. A. Clark, doing business as J. A. Clark Company operates 25 motor vehicles;

The Plaintiff H. Jacobs, doing business as Commercial Drayage Company, operates 7 motor vehicles;

The Plaintiff Emmons Draying & Rigging Company, Inc., operates 27 motor vehicles;

The Plaintiff Farnsworth & Ruggles Draying & Rigging Company, Inc., operates 90 motor vehicles;

The Plaintiff Fred C. Gerdes doing business as Fred C. Gerdes Moving & Storage Company, operates 4 motor vehicles;

The Plaintiff King & Company, Inc., operates 45 motor vehicles;

The Plaintiff Joe Mangini Draying Company, Inc., operates 23 motor vehicles;

The Plaintiff H. T. Porter, operates 4 motor vehicles;

The Plaintiff J. Coughlin and E. Coughlin, doing business as Red Line Transfer Company, operates 15 motor vehicles;

The Plaintiff O. Scharetg, G. Scharetg and R. Scharetg, doing business as Scharetg & Sons, operates 5 motor vehicles;

The Plaintiff L. Goldman and L. Levy doing business as Schussler & Company, operates 19 motor vehicles;

The Plaintiff M. Worth, doing busines as C. A. Worth Company, operates 24 motor vehicles;

The Plaintiff United Draying & Rigging Company, Inc., operates 39 motor vehicles;

The Plaintiff Becker Storage Company, Inc., operates 2 motor vehicles;

The Plaintiff J. Haake, doing business as Empire Express, operates 2 motor vehicles;

[fol. 3] The Plaintiff C. C. Miller doing business as Miller Moving & Storage Company operates 3 motor vehicles;

The Plaintiff Owl Transfer Company, Inc., operates 4 motor vehicles;

The Plaintiff Pierce Rodolph, Inc., operates 3 motor vehicles;

The Plaintiff Union Transfer Company, Inc., operates 17 motor vehicles;

The Plaintiff A. W. Reid doing business as Reid's Express operates 10 motor vehicles.

Said plaintiffs allege that they have for some years last past and are now operating said motor vehicles exclusively within the limits of incorporated cities in the State, and said motor vehicles do not use any public highway, except the streets of said incorporated cities, and the plaintiffs must use said motor vehicles on said streets, in order to carry on their business.

II

That the said Defendant Frank G. Snook, as Chief of the Division of Motor Vehicles, State of California, has been for some years last past and is now the duly appointed, qualified and acting chief of the division of motor vehicles, residing at Sacramento.

III

The State of California enacted the "California Vehicle Act," being Chapter 226, Statutes of 1923, as amended by Chapter 240, Statutes of 1925, and by Chapters 752, 844 and 864, Statutes of 1927—Said Act, as amended, is in full force and effect, and is herein referred to and made a part hereof, the same as if set out in full.

Under the provisions of said Act, as amended, the defendant, as Chief of division of motor vehicles has the sole jurisdiction, and it is his duty to enforce all the provisions of said Act (Sections 29, 30, 37).

That every owner of a motor vehicle, trailer or semi-trailer, which shall be operated upon the highways is compelled to register the vehicle (Sec. 36)—Every vehicle [fol. 4] registration shall expire at midnight on the Twenty-first day of December of each year, and shall be renewed annually—(Sec. 44).

The said defendant cann-t grant an application for registration or issue registration or number plates, unless the correct fee be paid (Sec. 49). It shall be unlawful and constitute a misdemeanor for any person to operate any motor vehicle, trailer or semi-trailer upon a public highway which shall not be registered and registration fees have not been paid (Sec. 51) and punished by a fine of not to exceed $500, imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment—moreover the registration fee and penalty *in*stitute a lien upon the vehicle upon which the same are due and it is the duty of said defendant to collect such fee and penalty by seizure of such vehicle and by the sale of such vehicle (Sec. 81).

Every motor vehicle, trailer, semi-trailer or electric motor must pay in advance, a registration and license fee of $3.00 before it can be operated on the public highways, except those exempted ((a) Sec. 77). In addition to said $3.00, each electric passenger, motor vehicle must pay in advance, $10.00 and every electric vehicle designed, used or maintained for the transportation of persons or property for hire must pay in advance from $50.00 to $90.00, depending upon the weight ((b) Sec. 77). In addition to said $3.00, every vehicle, including trailer or semi-trailer used or maintained for the transportation of persons or property for hire, except electric vehicles must pay, in advance, from $15.00 to $70.00 depending upon the weight ((c) Sec. 77). Vehicles not equipped wholly with pneumatic tires shall pay in addition to said $3.00 fee twice the amount of said fee ((c) Sec. 77). Manufacturers and deal-[fol. 5] ers shall pay in advance, fees on every motor vehicle or motorcycles. Fees charged for transfer of motor vehicle, trailer or semi-trailer, and for duplicate plate or certificate. Fees charged for chauffeur's license or a duplicate operator's or chauffeur's certificate or chauffeur's badge. Counties and incorporated cities have powers, only to license and regulate the operation of vehicles used for hire (Sec. 145).

The defendant shall deposit in the State Treasury to the credit of the motor vehicle fund all moneys collected during the preceding business day (Sec. 157). A motor vehicle fund was created and the State treasurer must deposit all moneys received by him from the defendant in said motor vehicle fund (Sec. 159). The balance of said fund, after the expenditure of so much as may be permitted for the support of the Division of Motor Vehicles, but not more than 25% collected, shall be divided, one half shall be paid to the counties in proportion to the number of vehicles registered in said counties as determined by the places of residences of the owners. All amounts paid to the counties shall be deposited in road funds and shall be expended exclusively in the construction and maintenance of public roads, bridges and culverts in said counties, but cities can be allotted money if counties so desire, the other half is expended solely for the maintenance, repair, widening, resurfacing and reconstructing of State and State park roads.

IV

That the plaintiffs allege the Supreme Court of California has interpreted the said (b) and (c) of Sec. 77 of said Act and declared that the sole purpose was to exact license fees on motor vehicles using the public highways and to raise funds with which the said public highways may be improved and kept in repair, and the money so raised [fol. 6] was collected as a charge for the use of said public highways by motor vehicles transporting passengers or property for hire. Reference is made to such decision, being Old Homestead Bakery v. Marsh, 242 Pac. 749—That the plaintiffs allege the said license taxes or fees, being a charge for the use of public highways by motor vehicles, are "Tolls."

V

That the plaintiffs allege the incorporated cities of the State have enacted ordinances and laws exacting license taxes or fees on motor vehicles, trailers and semi-trailers transporting passengers or property for hire using the streets of said cities, all of which license taxes or fees are in addition to the license taxes or fees under the provisions of (b) and (c) of said Sec. 77, as aforesaid. Said license

taxes or fees vary from $5.00 to $42.00 per motor vehicle, depending upon the city, and were enacted for the purpose of regulation of said motor vehicles transporting passengers or property for hire and for revenue and not less than 75% of the proceeds derived from said license taxes or fees have been and in the future will be applied to the maintenance and repair of said streets in said cities.

VI

That the plaintiffs allege the plaintiffs as well as said others, must pay on or before January 31, 1929 said license taxes or fees, in order to use the streets of incorporated cities and escape the said heavy fines or imprisonments, or both, together with said seizure and sale of said motor vehicles, and moreover they must use said motor vehicles or their business will be destroyed at their irreparable loss, damage and injury. Said defendant, solely under color of his office as Chief of the Division of Motor Vehicles, threatens to and will enforce said provisions of said "California [fol. 7] Vehicle Act," especially said unconstitutional clauses (b) and (c) of said Sec. 77, against the plaintiffs and all persons, firms, associations and corporations similarly interested or situated, unless restrained by the order of this Court.

VII

That the plaintiffs allege said clauses (b) and (c) of the Sec. 77 of the "California Vehicle Act," being Chapter 266, Statutes of 1923, as amended and said actions of the defendant Frank G. Snook in enforcing the said illegal clauses (b) and (c) were and are void and unconstitutional, being contrary to and in violation of the Constitution of the United States, especially the 14th Amendment thereof and the Constitution of the State of California, the protection of all of which the plaintiffs and all persons, firms, associations and corporations similarly interested or situated pray.

VIII

The premises considered these plaintiffs and all persons, firms, associations and corporations similarly interested or

situated have no plain adequate and complete remedy at law.

IX

That the matters involved in this controversy exceed in value the sum of Three Thousand (3,000) Dollars, exclusive of interest and costs.

X

For as much as these plaintiffs and all persons, firms, associations and corporations similarly interested or situated can have no adequate relief except in this Court and to the end that the defendant may, if he can, show why the plaintiffs and all persons, firms, associations and corporations similarly interested or situated should have the relief [fol. 8] herein prayed, and make full disclosure and discovery of all the matters aforesaid according to the best and utmost of their knowledge, information and belief, full, true, direct and perfect answer make to the matters in this bill of complaint hereinabove stated, but not under oath, an answer made under oath on behalf of themselves, as well as on behalf of all persons, firms, associations and corporations similarly interested or situated, who are entitled to the benefits herein, pray that an interlocutory injunction be granted restraining and enjoining the defendant, Frank G. Snook, as Chief of Motor Division, as aforesaid, from in any way or manner enforcing or threatening to enforce the said provisions of said clauses (b) and (c) of said Sec. 77 of the "California Vehicle Act," as aforesaid, and the plaintiffs pray that this Court proceed to call in two other judges, one of whom to be a circuit judge, for the purpose of hearing and determining the application for said interlocutory injunction as prayed for herein under the provisions of Section 266, as amended, of the Judicial Code, and the plaintiffs pray upon the final hearing of this cause before said Court consisting of three judges for a decree declaring the said clauses (b) and (c) of Sec. 77 of the "California Vehicle Act," being Chapter 266, Statutes of 1923, as amended are void and unconstitutional, and that the said defendant, Frank G. Snook, as Chief of Division of Motor Vehicles, be forever enjoined and permanently

restrained from enforcing the illegal, void and unconstitutional clauses (b) and (c) of said Sec. 77, as aforesaid, and further pray for all other, proper and further relief as may be just and equitable in the premises; and further for the costs and disbursements herein expended.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

[fol. 9] Post Office address: 310 Call Building, San Francisco, Calif. Tel. Karny 131.

Duly sworn to by W. S. Hamilton. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 10] In United States District Court

[Title omitted]

Motion for an Interlocutory Injunction—Filed Dec. 29, 1928

Come now the Plaintiffs in the above entitled cause and move this Court for an order to show cause why the Plaintiffs are not entitled to the issuance of an interlocutory injunction until the final determination of said cause; and the Plaintiffs request this Court will call in two other Judges, one of whom shall be a Circuit Judge, under the provisions of Section 266, as amended, of the Judicial Code, so as to hear and determine said motion for an interlocutory injunction, as the constitutionality of the provisions of a Statute of the State of California, and the acts of the said Defendant, Frank G. Snook, as Chief of the Division of Motor Vehicles, in enforcing said provisions of said State Statute are involved in this action, and further, that said Court, consisting of three Judges, shall finally hear and determine such action.

Said motion is based upon the records and files in the cause, and the Affidavit attached to the Motion.

W. R. Crawford, J. F. Vizzard, Solicitors of Plaintiffs.

[fol. 11] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. F. VIZZARD—Filed Dec. 29, 1928

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. F. Vizzard, being first duly sworn, deposes and says; that for nine years last past he has been Manager and Secretary of the Draymen's Association of San Francisco; for four last past, Secertary and Manager for the California Transfer and Storage Association and for six years was Secretary and Manager of the California Truck Owner's Association; that part of his duties in these offices was to become conversant with the laws of the State of California regarding the registration and operation of vehicles, especially commercial vehicles and particularly Clauses B and C of Section #77 of the "California Vehicle Act;" that during the year 1928 there was collected by defendant under color of Section #77 of said Vehicle Act a sum in excess of $5,000,000 from the $3.00 registration fee, being Clause A; that there was collected the sum of $2,668,000 under color of Clauses B and C of Section #77; that there was collected in addition to these sums a sum in excess of $400,000 from chauffeurs' and operators' licenses; that under Section #159 of said Vehicle Act, defendant retained no more than 25% of the first two above mentioned figures to cover the expense of the operation of his department, including the regulation of vehicles on the public highways outside of incorporated cities, leaving a sum of about $6,000,000, which under the provisions of the Act were distributed one-half to the State Highway fund for the maintenance and repair of the Federal aided highways and one-half to the counties for the maintenance and construction of county roads; that under the provisions of Clauses of Section #159 of said Act, such counties may and do spend considerable amounts of monies for the construction of highways within the confines of incorporated cities, [fol. 12] the amount of which expenditures is at the present time unknown to affiant; that by reason of the passage of an Amendment to Clauses B and C of Section #77 of said California Vehicle Act, effective January 1st, 1929, the

figures above shown will be materially increased; that such increase in the opinion of affiant will be at least $2,000,000 per year; that in the opinion of affiant above named plaintiffs and all others in like situation will be required to pay at least 75% of all funds collected under color of Clauses B and C of Section #77 of the "California Vehicle Act."

J. F. Vizzard.

Subscribed and sworn to before me this 29th day of December, 1929. Charles D. O'Connor, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 13] In United States District Court

[Title omitted]

Notice of Hearing—Filed Jan. 9, 1929

To the Honorable C. C. Young, Governor of the State of California; the Honorable U. S. Webb, Attorney General of the State of California, and Frank G. Snook, as Chief of Division of Motor Vehicles:

This is to notify you and each of you that, pursuant to Section 268, as amended, of the Judicial Code, the District Court of the United States for the Northern District, Southern Division, has set for hearing and determination in the Federal Court Room of this Court in the Federal Building in the City of San Francisco, California, at the hour of 10 o'clock A. M. on the 18th day of January, 1929, the application for an interlocutory injunction in the cause of Carley & Hamilton, Inc., et al., vs. Frank G. Snook, as Chief of Division of Motor Vehicles, being Cause No. 2274 L in Equity.

By order of said Court, the undersigned serve copies of the Bill of Complaint, the Motion for an Interlocutory Injunction with the Affidavit attached thereto, and Order entered herein.

J. F. Vizzard, Solicitor of Plaintiffs.

[fol. 14] Copies of the Bill of Complaint, the Motion for Interlocutory Injunction with Affidavit attached thereto and the Order entered thereon, and the Notice are ackknowledged this 8th day of January, 1929.

C. C. Young, Governor. U. S. Webb, Attorney General.

Service on Jan. 8, 1929.

F. G. Snook, as Chief of Division of Motor Vehicles.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR RESTRAINING ORDER—Filed Jan. 30, 1929

To the Honorable Judge of the District Court of the United States for the Northern District of California, Southern Division, sitting in equity:

Come now the plaintiffs in the above cause and pray this Court on behalf of themselves and on behalf of all persons, firms, associations and corporations similarly interested or situated for a Restraining Order without notice against the defendant Frank G. Snook, as Chief of the Division of Motor Vehicles, commanding and directing him to in any way or manner enforcing or threatening to enforce the said provisions of said clauses "B" and "C" of said Section 77 of said California Vehicle Act until the hearing and determination of the temporary injunction prayed for in said bill of complaint.

This motion is based upon the Bill of Complaint herein, the records and files in the above entitled cause and the affidavit attached to this motion.

W. R. Crawford, J. F. Vizzard.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. F. VIZZARD—Filed Jan. 30, 1929

STATE OF CALIFORNIA,
City & County of San Francisco:

J. F. Vizzard, first being duly sworn, deposes and says: that he is one of the solicitors for the plaintiffs herein; that the plaintiffs filed their Bill of Complaint on the 29th day of December, 1928; that on the same date the solicitors filed a motion for an interlocutory injunction to be heard before a statutory court to be convened under Section 266 of the Judicial Code of the United States and that at said time the District Court heard said motion and was compelled to communicate with the Circuit Judge Gilbert at Portland, Oregon; that on the 7th day of January the said District Court set the said hearing before said Statutory Court for January 18th, 1929; that the affiant immediately on January 8th, 1929, served the papers in said cause upon Governor C. C. Young, and Frank G. Snook as Chief of the Division of Motor Vehicles and on the morning of January 9th affiant served the papers on U. S. Webb, Attorney General.

On said day Frank L. Guerena, Deputy Attorney Gen-
[fol. 17] eral, having been assigned as attorney for said Frank G. Snook on said day to-wit., January 9th, 1929 requested this affiant to postpone the date of said hearing for at least two weeks from January 18th, 1929, owing to the fact that his duties required him to be at Sacramento, California during the session of the Legislature; said Frank L. Guerena requested your affiant to make such request of your Court in order to save him from making a formal application to your Honorable Court for such extension; that your affiant took the matter up with the Court at his request although we were ready and willing to argue the motion for said Temporary Injunction at the time originally set, to-wit, January 18th, 1929. That shortly after January 7th, affiant took up with said F. L. Guerena the question of the enforcement of said clauses "B" and "C" of said Section 77 of said California Vehicle Act after Jan-

uary 31st, 1929 and said Guerena informed affiant that he would take up this matter with U. S. Webb, Attorney General and would notify affiant as soon as possible; that said Guerena had not informed said affiant although affiant had called on him at his office at numerous times for a week; affiant did not reach him until January 19th, 1929 by telephone; at said time said Guerena informed affiant that after consultation with the Attorney General said defendant Snook as Chief of the Division of Motor Vehicles could not and would not desist and refrain from enforcing the penalties of said California Vehicle Act if the plaintiffs and all others similarly interested and situated unless they pay the entire fees as set out in clauses "A," "B" and "C" of said Section 77 of said California Vehicle Act. In other words said Snook will enforce clauses "B" and "C" of said Section, although said plaintiffs and all others have served and filed said Bill of Complaint on December 29th, [fol. 18] 1928, and although a hearing and determination of said temporary injunction was set for hearing prior to the said 31st day of January, 1929.

This affiant and his associate solicitor feel that they are entitled to said Restraining Order prayed for as such hearing of January 18th, 1929 was set aside and reset by the efforts of the solicitors for said defendant.

On Saturday, January 19th, 1929 said Guerena suggested that the affiant should communicate with the defendant and that if said defendant would hold all the moneys collected from said clauses B and C of said Section 77 intact until after the hearing and determination of the temporary injunction set for February 5th, 1929, same would be agreeable to his office.

That on January 21st and 22nd, 1929 affiant called on said defendant, but could not reach him because he was at home ill; that on January 23rd he reached said defendant through his attorney, but defendant refuses to withhold said moneys unless with the advice of the Attorney General. That on January 24th the Attorney General refused to give such advice and consent.

J. F. Vizzard.

Subscribed and sworn to before me this 24th day of January, 1929. Charles D. O'Connor, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER—Filed Jan. 30, 1929

The matter of the application for Restraining Order prayed for by plaintiffs came on for hearing.

It appearing that after an examination of the records, files and the motion for said Restraining Order and the affidavit of J. F. Vizzard attached to said motion and the argument of solicitors for the plaintiffs that the Court finds that said plaintiffs will be irreparably damaged unless said Restraining Order is issued out of this Court.

Therefore it is Ordered, Adjudged and Decreed that said defendant Frank G. Snook, as Chief of the Division of Motor Vehicles be, and he is hereby restrained and enjoined from expending, disbursing or dispositing in the State Treasury all moneys collected by him under the provisions of Clauses "B" and "C" of Section 77 of the California Vehicle Act, but all of said moneys shall be held intact, subject to any order to be made hereafter in the above entitled cause and until after the hearing and determination of the application for Temporary Injunction which will be held on February 6th, 1929.

Harold Sanderbach.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT—Filed Jan. 25, 1929

Now comes Frank G. Snook, as Chief of Division of Motor Vehicles, State of California, named as defendant

in the above entitled proceeding and moves the above entitled court to dismiss the bill of complaint filed herein on the following grounds:

I

That said bill of complaint does not state facts sufficient to constitute a cause of action against said defendant, or to entitle complainants, or any of them, to the whole or any part of the relief prayed for in said bill.

II

That this court has no jurisdiction of the subject of this proceeding, or of the above named defendant, or of the State of California.

III

That there is a defect of parties plaintiff in that the several plaintiffs are not properly joined.

[fol. 21]

IV

That there is a misjoinder of parties plaintiff in that the plaintiffs are not properly joined.

V

That several alleged causes of action have been improperly united.

VI

That complainants have not, and no one of them has, legal capacity to sue defendant.

This motion is also based upon the said bill of complaint, the notice of motion and upon all of the papers and records on file in the above entitled proceeding.

Dated: —— —, ——.

U. S. Webb, Attorney General of California; Frank L. Guerena, Deputy Attorney General, Attorneys for Defendant Frank G. Snook, as Chief of Division of Motor Vehicles, State of California.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Hon. Frank H. Rudkin, Circuit Judge; Hon. A. F. St. Sure, District Judge; Hon. Harold Lounderback, District Judge

OPINION—Filed Feb. 13, 1929

Memorandum by the COURT:

This is a suit to restrain the enforcement of certain provisions of the California Vehicle Act of 1927. The plaintiffs are corporations and individuals operating motor vehicles exclusively within the limits of incorporated cities of the State and make no use of the highways of the state, except the streets of the cities in which they operate. The defendant is chief of the Division of Motor Vehicles in the state and by virtue of his office is charged with the duty of enforcing the provisions of the Motor Vehicle Act. Section 77a of the act prescribes a registration fee of $3.00 for the registration of every motor vehicle, trailer or semi-trailer, except those which are exempted by the act, to be paid at the time application is made for registration. Section 77b prescribes an additional registration fee for the registration of every electric passenger motor vehicle, and for the registration of every electric motor vehicle designed, used or maintained primarily for the transportation of passengers for hire or for the transportation of property; the additional fee varying from $50.00 to $90.00 depending upon the weight of the vehicle. Sections 77c prescribes an additional registration fee for the registration of vehicles, including trailers and semi-trailers, designed, used or maintained primarily for the transportation of passengers [fol. 23] for hire or for the transportation of property; the additional fee varying from $20.00 to $70.00, depending upon the weight of the vehicle; but the additional fee prescribed by this subsection need not be paid for electric vehicles. Section 51 declares that it shall be unlawful and constitute a misdemeanor for any person to operate, or for the owner thereof to knowingly permit the operation of any motor vehicle, trailer or semi-trailer upon a public highway, which shall not be registered, or for which the

registration fees have not been paid, when and as required by the provisions of the act. Section 21 defines public highway as, every highway, road, street, alley, lane, court, place, trail, drive, bridge, viaduct or trestle laid out or erected as such by the public, or dedicated or abandoned to the public, or intended or used for or by the general public, except such portions thereof as are used or prepared for use by pedestrians as sidewalks. Section 159 of the acts creates in the state treasury a motor vehicle fund in which is deposited all moneys received from registration fees and some other sources. One-half the net receipts from this fund is appropriated and authorized to be paid from the motor vehicle fund to the counties of the State in proportion to the number of vehicles registered in such counties as determined by the places of residence of the owners to whom the registration certificates are issued, and the board of supervisors of any county, in its discretion, may expend any portion of the sum so received by the county in the construction, maintenance and repair of streets, bridges and culverts within those incorporated cities therein, the legislative bodies of which, by ordinance, authorize such work of construction, maintenance and repair. In addition to the foregoing fees, the complaint avers that the incorporated cities of the state have enacted ordidances exacting license taxes or fees on motor vehicles, trailers and semi-trailers using the streets of the cities for [fol. 24] the transportation of passengers or property for hire; the amount of the tax or fee varying from $5.00 to $42.00 per motor vehicle in the different cities.

The plaintiffs challenge the validity of those portions of the act imposing a tax or registration fee on the vehicles owned and operated by them within the corporate limits of the several municipalities of the state on the ground that the fee is in the nature of a toll for the use of the highways, and inasmuch as the plaintiffs make no use of the highways outside of the municipalities and are taxed for such use by the municipalities, the exaction by the state violates the Fourteenth Amendment to the Constitution of the United States. This broad contention cannot be sustained. In the lawful exercise of its acknowledged police power, the states may, beyond question, exact registration fees

from owners and users of motor vehicles, varying with their horse power or weight, regardless of the extent or place of use, so long as the vehicles are or may be used on the public highways of the State. Thus in Hendrick v. Maryland, 235 U. S. 410-22, the court said:

"The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is abnormally destructive to the ways themselves. Their success depends on good roads, the construction and maintenance of which are exceedingly expensive; and in recent years insistent demands have been made upon the states for better facilities, especially by the ever-increasing number of those who own such vehicles. As is well known, in order to meet this demand and to accommodate the growing traffic the State of Maryland has built and is maintaining a system of improved roadways. Primarily for the enforcement of good order and the protection of those within its own jurisdiction the state put into effect the above-described general regulations, including requirements for registration and licenses. A further evident purpose was to secure some compensation for the use of facilities provided at great cost from the class for whose needs they are essential and whose operations over them are peculiarly injurious.

"In the absence of national legislation covering the subject a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation on its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their driver, charging therefor reasonable [fol. 25] fees graduated according to the horsepower of the engines—a practical measure of size, speed, and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce."

And in the late case of Kane v. New Jersey, 242 U. S. 160-7, the Court said:

"The power of a State to regulate the use of motor vehicles on its highways has been recently considered by this

Court and broadly sustained. It extends to non-residents as well as to residents. It includes the right to exact a reasonable compensation for special facilities afforded as well as reasonable provisions to insure safety. And it is properly exercised in imposing a license fee graduated according to the horse power of the engine."

For these reasons we are of opinion that the registration fee imposed by the state is a valid exercise of the police power of the State and violates no provisions of the Constitution of the United States.

Whether the fee or tax imposed by the municipalities for the like use is valid or not, we need not inquire because its validity is not questioned.

The decree or order heretofore entered granting a preliminary injunction, is therefore dissolved and the bill of complaint is dismissed for want of equity.

Let a decree be entered accordingly.

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISSOLVING INJUNCTION, ETC.—Feb. 13, 1929

Plaintiff's application for an injunction and defendant's motion to dismiss, heretofore argued and submitted, herein, and the Court having filed its Memorandum Opinion herein, it is in accordance with said opinion ordered that said application for an injunction be and the same is hereby denied; the preliminary injunction heretofore issued herein be and the same is hereby dissolved, and that the motion to dismiss be and the same is hereby granted and the cause dismissed. Further ordered that a decree be signed, filed and entered herein in form as submitted, dismissing cause and for costs.

[fol. 27] IN UNITED STATES DISTRICT COURT

No. 2274-L. In Equity

CARLEY & HAMILTON, INC., et al., Plaintiffs,

vs.

FRANK G. SNOOK, as Chief of Division of Motor Vehicles, Defendant

DECREE—Filed Feb. 13, 1929

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

1. That the preliminary injunction heretofore granted and issued in the above entitled cause be and the same is hereby dissolved.

2. That the bill of complaint herein be and the same is hereby dismissed for want of equity.

3. That the defendant have and recover of and from the plaintiffs his costs to be taxed and that execution issue therefor.

Dated 13th day of February, 1929.

Frank H. Rudkin. Frank H. Rudkin, Circuit Judge.
A. F. St. Sure. A. F. St. Sure, District Judge.
Harold Louderback. Harold Louderback, District Judge.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO FILE AMENDED BILL OF COMPLAINT

Come now the plaintiffs in the above entitled cause and show that they have served upon the solicitors of the defendant copies of the above Motion, a proposed amended

bill of Complaint and the notice of this motion, and they pray this Honorable Court for permission to file said proposed amended bill of complaint which is presented herewith, as provided for in the equity Rules promulgated by the Supreme Court of the United States.

W. R. Crawford, J Wizzard, Solicitors of Plaintiffs.

[fol. 29] In United States District Court

[Title omitted]

Amended Bill of Complaint—Filed Feb. 25, 1929

[fols. 30-33] To the Honorable Judges of the District Court of the United States for the Northern District of California, Southern Division, sitting in equity:

* * * * * * *

[fol. 34] IV

That the Congress of the United States on July 11th, 1916, enacted an Act entitled:

"An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." Chap. 241, 39 Stat. at L. 355.

The State of California enacted a law, assenting to and agreeing to abide with the provisions of said Rural Post Roads Act, entitled:

"An Act expressing assent of the State of California to the provisions of the Act of Congress approved July 11, 1916, entitled 'An Act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes.'" Chap. 29, Laws of 1917.

Thereafter on November 9, 1921 Congress amended and supplemented said Act by the "Federal Highway Act," Chap. 119, 42 Stat. at L. 212.

That the Federal Government has since the year 1917 paid over to said State many millions of dollars under said Federal Acts for the construction or reconstruction of

highways and in the future said Federal Government will pay additional millions to said State. That said Federal aid has been expended either on State highways or county roads for construction or reconstruction of portions of said State highways or county roads. Every State highway or county road is a rural post road and comes within the provisions of said Federal Acts, one of said provisions provided:

"That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds."

[fol.35] V

That in said "California Vehicle Act" of 1923 as amended by Chap. 844, Stat. of 1927, the following provisions are found:

"Registration and License Fees

Title VII

Registration Fees:

Sec. 77. (a) A registration fee of Three Dollars shall be paid to the Division for the registration of every motor vehicle, trailer or semi-trailer except for those which are exempted in this Act, and such fee shall be paid at the time application is made for registration.

Fees for Electric Vehicles:

(b) In addition to the registration fee specified in subdivision (a) of this section, there shall be paid ten dollars, and for the registration of every electric motor vehicle designed, used or maintained primarily for the transportation of passengers for hire, or for the transportation of property, there shall be paid fees according to the sollowing schedule:

——, less than six thousand pounds $50
——, less than ten thousand pounds $70
——, ten thousand pounds or over $90

Fees for Motor Vehicles:

(c) The following registration fees in addition to the registration fee specified in sub-division (a) of this section

shall be paid for the registration of vehicles, including trailers and semi-trailers, designed, used or maintained primarily for the transportation o*g* passengers for hire or for the transportation of property, according to the following table:

When such vehicles are equipped wholly with pneumatic tires—

when unladen, three thousand pounds or more and less than six thousand pounds	$15.00
when unladen, six thousand pounds or more, but less than ten thousand pounds and limited to a total weight, including vehicle and load, not *to* exceeding twenty-two thousand pounds	40.00
when unladen, ten thousand pounds or more, a total weight, including vehicle and load, not exceeding twenty-two thousand pounds	50.00
when unladen, six thousand pounds or more and a total weight, including vehicle and load, in excess of twenty-two thousand pounds	70.00

[fol. 36] Vehicles not Equipped with Pneumatic Tires:

When such vehicles are not equipped wholly with pneumatic tires there shall be paid in addition to the fees specified in sub-division (a) twice the fees set forth in the foregoing table."

The plaintiffs allege that the owners of motor vehicles must make an application for registration, and said application must show whether the vehicle, trailer or semi-trailer is for private use or for the transportation of passengers for hire, for the transportation of property, or exempted by the act; every vehicle, trailer or semi-trailer must pay not only the registration fee of $3.00 under sub-division (a), but also the license fee demanded under sub-division (b) or (c) of said Section 77, as amended; ordinary number plates are issued on said applications showing the vehicle to be a passenger vehicle to be operated for private use under sub-division (a), and special number plates are issued to each vehicle, trailer or semi-trailer

which show said vehicle, trailer or semi-trailer comes within the provisions of said sub-divisions (b) or (c) and is to be operated for the transportation of passengers for hire or for the transportation of property and also special number plates are issued to exempted vehicles which show said vehicle, trailer or semi-trailer is not subjected to any registration and license fee.

That the defendant before the amendment increasing license fees under sub-division (b) and (c) collected from December 31, 1927, to December 29, 1928, about $5,200,000.00 from the registration fee of $3.00, and these plaintiffs and all others, except those exempted, were forced to pay in advance said amount of said money.

Also the plaintiffs and all persons, firms, associations [fol. 37] and corporations using the said Federal Aided highways, including the streets within the limits of municipalities, by their motor vehicles, trailers or semi-trailers for transportation of passengers or property, paid in advance the said license fees and during said period the defendant collected about $2,668,000.00 from said license fees and issued number plates designating said motor vehicles, trailers or semi-trailers were within the said sub-divisions (b) or (c) of Section 77 of said Act. The defendant expended about $1,700,000.00 for the maintenance of his office and the cost of regulating and enforcing the said provisions of said "California Vehicle Act", and will divide about $6,000,000.00 the net proceeds, equally between the State and Counties.

That said Amendment of 1927 does not go into force and effect until after January 31, 1929. Under said Amendment of 1927 the said license fees outlined in Subdivisions (b) were increased about 25% and for subdivision (c) were increased about 250%, and said amendment repealed the following clause in subdivision of (c), to-wit: "For each such vehicle weighing, when unladen, less than 3,000 pounds $10.00, and by such amendment many thousands of vehicles transporting passengers for hire or property have been freed from said license fees under said subdivision (c), although said vehicles weigh more than 6,000 pounds when loaded.

VI

The plaintiffs allege that the Supreme Court of California has interpreted the said sub-divisions of (b) and (c) of said Section 77 of said "California Vehicle Act" and declared that the purpose was to create a fund to maintain and repair the highways outside of the limits of municipalities and to receive compensation for the use of said [fol. 38] highways by motor vehicles and also the said license fees are exacted as revenue measures and the Federal Court is bound to respect the said meaning of said sub-divisions (b) and (c).

The plaintiffs allege that the license fees exacted under said sub-divisions (b) and (c) are "tolls", prohibited by said Federal Aid Legislation, as aforesaid, and every cent received has been expended for the maintenance and repair of said Federal Aided Highways.

VII

That the plaintiffs allege the incorporated cities of the State have enacted ordinances and laws exacting license taxes or fees on motor vehicles, trailers and semi-trailers transporting passengers or property for hire using the streets of said cities, all of which license taxes or fees are in addition to the license taxes or fees under the provisions of (b) and (c) of said Sec. 77, as aforesaid. Said license taxes or fees vary from $5.00 to $250.00, according to the weight of the motor vehicle and depending upon the city, and were enacted for the purpose of regulation of said motor vehicles transporting passengers or property for hire and for revenue and not less than 75% of the proceeds derived from said license fees or taxes have been and in the future will be applied to the maintenance and repair of said streets in said cities.

VIII

The plaintiffs are taxpayers and are financially able to pay the registration fees in said sub-division (a), to-wit, $3.00 for each motor vehicle, trailer or semi-trailer owned by them and offered to pay said registration fees, but the

defendant has refused and will refuse to accept said monies for said registration fees, unless the plaintiffs and said [fol. 39] others pay in addition the license fees in sa*di* sub-divisions (b) or (c). That said plaintiffs and all others similarly interested or situated use exclusively the streets of municipalities with their vehicles and have paid, as aforesaid, said "tolls" for the privilege of using said streets.

That the plaintiffs and said others must pay on or before January 31, 1929, said license fees in said sub-divisions (b) or (c) of said Section 77, to obtain said special number plates before using the streets of the municipalities, and this defendant threatens to and will cause the arrests of said plaintiffs and said others and they will be subjected to heavy fines or imprisonments, or both, and also their vehicles will be seized and sold, and further said plaintiffs and said others will be compelled in the future to buy additional vehicles in order to take care of their business and will be forced to pay said license fees on said additional vehicles.

That the plaintiffs have been informed and believe the fact to be and upon such information and belief allege that said defendant, under color of his office, will collect during the year 1929 at least $4,000,000.00 alone from said license fees exacted by said sub-divisions (b) and (c) of said Section 77, as amended, and will issue said special number plates, and that 75% of said amount will be collected from the plaintiffs and those persons, firms, associations and corporations similarly interested or situated who operate their vehicles exclusively on the streets of municipalities, as aforesaid, and further the defendant will not and cannot collect any license fee from any owner or operator of a vehicle weighing, unladen, less than 3,000 pounds, no matter if the weight of the vehicle and load exceed 6,000 pounds, and will not and cannot issue said special number plates, and said thousands of vehicles, which are used ex- [fol. 40] clusively for the transportation of passengers for hire or property, are relieved from said licenses fees, as aforesaid.

The plaintiffs and said others allege that the enforcement of said unconstitutional subdivisions (b) and (c), as aforesaid, by said defendant, will not only cause said plaintiffs

and said others irreparable loss and damage, but also their business will be irreparably destroyed by said thousands of vehicles weighing unladen 2,999 pounds or less, as aforesaid, and further said moneys so collected are expended on said Federal Aided Highways for the benefit of the owners of land adjacent to said highways to the irreparable loss and injury of said plaintiffs and all of said others who receive no benefit from such expenditures.

IX

That the plaintiffs, on behalf of themselves, as well as those persons, firms, associations and corporations similarly interested or situated, allege that said sub-divisions (b) and (c) of Section 77 of the "California Vehicle Act", Chapter 266, Statutes of 1923, as amended by Chapter 844, Statutes of 1927, and the said actions of the defendant Frank G. Snook, as Chief of the Division of Motor Vehicles, in enforcing said illegal subdivisions (b) and (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the 14th Amendment of the Federal Constitution, as well as the Constitution of the State of California, prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens, or which shall deprive any person of life, liberty, or property without due process of law, or denies to any person the equal protection of the laws, the protection of all of [fol. 41] which, the said plaintiffs and all of said others pray.

* * * * * * *

[fol. 42] W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

[fol. 43] *Duly sworn to by W. S. Hamilton. Jurat omitted in printing.*

[File endorsement omitted]

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR LEAVE TO FILE AMENDED BILL OF COMPLAINT

To Frank G. Snook, as Chief of the Division of Motor Vehicles, defendant, and his solicitors, the Honorable U. S. Webb, Attorney General, and Frank L. Guerena, Deputy Attorney General:

Please take notice that the Plaintiffs in the above entitled cause will present a motion to file an amended Bill of Complaint to said Court at the Federal Building in the Court Room of said Court in the City of San Francisco, State of California, at the hour of 10 o'clock A. M. on the 25 day of February, 1929.

A copy of said Motion and the proposed Amended Bill of Complaint is served with the above Notice.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

Receipt of said Notice, and Motion and proposed Amended Bill of Complaint acknowledged.

Dated February 23rd, 1929.

U. S. Webb, Frank L. Guerena, Solicitors of Defendant.

(Endorsed:) Filed March 25th, 1929.

[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO VACATE DECREE—March 25, 1929

The motion to set aside the decree and motion for leave to amend the complaint came on regularly this day to be heard. W. R. Crawford, Esq., and J. F. Vizzard, Esq., appearing as attorneys for complainants. Frank L. Guerena, Esq., appearing as attorney for defendant. After hearing Mr. Crawford it was ordered that the motion to set aside the decree be and the same is hereby denied.

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed April 16, 1929

And now, on this 15th day of April, 1929, came the plaintiffs by their solicitors W. R. Crawford and J. F. Vizzard and say that the order and decree made and entered in the above cause on the 13th day of February, 1929, denying the application for an interlocutory injunction against the defendant herein, is erroneous and unjust to plaintiffs:

Because the Court erred in refusing and denying the application for an interlocutory injunction against Frank G. Snook, as Chief of the Division of Motor Vehicles, the defendant herein.

And further, and now, on this 15th day of April, 1929, came the plaintiffs by their solicitors W. R. Crawford and J. F. Vizzard, and say that the order and decree entered in the above cause on the 13th day of February, 1929, dissolving the preliminary injunction, is erroneous and unjust to the plaintiffs:

Because the Court erred in dissolving the preliminary injunction.

And further, and now, on this 15th day of April, 1929, came the plaintiffs by their solicitors W. R. Crawford and [fol. 47] J. F. Vizzard, and say that the order and decree entered in the above cause on the 25th day of March, 1929, refusing and denying the application of the plaintiffs for permission to file an amended Bill of Complaint, is erroneous and unjust to plaintiffs:

Because the Court erred in refusing and denying the application for permission to file an amended Bill of Complaint.

Wherefore the plaintiffs pray that the said order and decree entered in said cause refusing and denying the application for said interlocutory injunction be reversed;

And further that said order and decree entered in said cause in dissolving the preliminary injunction be reversed;

And further that said order and decree entered in said cause dismissing the cause of action be reversed;

And further that said order and decree entered in the cause on March 25th, 1929, refusing and denying the appli-

cation of the plaintiffs for permission to file an amended bill of complaint be reversed;

And further that the lower court be directed and instructed to enter a decree as prayed for in said Bill of Complaint or the said amended Bill of Complaint, and for such proper relief as the plaintiffs are entitled to and as the nature of the cause demands.

W. R. Crawford, J. F. Vizzard,, Solicitors for Plaintiffs.

[File endorsement omitted.]

[fols. 48-57] In United States District Court

[Title omitted]

Petition for Appeal and Order Allowing Same—Filed April 16, 1929

The above named Plaintiffs, conceiving themselves aggrieved by the order and decree made and entered on the 13th day of February 1929, and said order and decree made and entered on the 25th day of March, 1929 in the above entitled action, do hereby appeal from the said orders and decrees to the Supreme Court of the United States, for the reasons specified in the Assignment of Error, which is filed herewith, and pray that this appeal may be allowed and a transcript of the records, proceedings, motions, orders, decrees and all papers in said action, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 15th day of April, 1929.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

The foregoing appeal is allowed upon the filing of a proper bond in the amount of two hundred fifty dollars.

Frank H. Rudkin, Circuit Judge. Harold Lauderbach, District Judge. A. F. St. Sine, District Judge.

[File endorsement omitted.]

[fols. 58 & 59] Citation, in usual form, showing service on U. S. Webb and Frank L. Guerena, filed April 16, 1929, omitted in printing.

[fol. 60] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 11, 1929

The Appellants request the Clerk to file and print this statement of points relied upon and the following parts of the record:

Points Relied Upon

I

The Appellants (plaintiffs) bring this action as a class suit on behalf of themselves and all persons, firms, associations and corporations similarly interested or situated.

II

The Appellants, as well as all said others, have for some years last past and are now operating motor vehicles carrying passengers for hire, or property, and must use their motor vehicles in order to carry on their business. Said motor vehicles do not operate on any public highways outside of cities, but all of the same operate exclusively within the limits of cities using the streets thereof.

III

The State of California enacted the "California Vehicle Act," as amended, and by the provisions of said Act, as amended, vested this the Appellee (defendant) with the jurisdiction to enforce all of the provisions of said Act, [fol. 61] as amended. That under the provisions of subdivisions (b) and (c) of Section #77 of said Act, as amended, the appellants and all others similarly interested or situated must pay in advance the amount of money called for under said subdivisions before they and said all others can use said streets in said cities, as aforesaid, by their vehicles as aforesaid. That all the said charges under the said subdivisions (b) and (c) are collected for the purpose of raising funds with which the public highways outside of the limits of cities may be improved and kept in repair, and said charges are "tolls."

IV

The appellants, as well as said others similarly interested or situated, are required to pay in advance the license fees which have been assessed by the different cities in the State, in order to use the respective streets of said cities so as to carry on their business, as aforesaid. That said license fees, as aforesaid, were enacted so as to raise funds for the purpose of the cost of regulation and revenue for maintaining and repairing the streets thereof which have been damaged by the said motor vehicles, and said charges are "tolls."

V

That said subdivisions (b) and (c) of Section #77 of said Act, as amended, are revenue measures.

VI

That all the money to be collected by the Appellee under said subdivisions (b) and (c) as aforesaid will be used exclusively for the maintenance and repair of the Federal Aided Highways, and no portion of said money will be used for the maintenance and repair of the streets within the limits of the cities. The cities must maintain and repair [fol. 62] their streets and the money collected from the respective license fees is expended for the said cost of regulation and the balance for said maintenance and repair of their respective streets.

VII

The said subdivisions (b) and (c) of Section #77 of said "California Vehicle Act," as amended, compelling the appellants and all persons, firms, associations and corporations similarly interested or situated to pay in advance said charges are unconstitutional and void, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution.

VIII

The said subdivisions (b) and (c) of Section #77 of said "California Vehicle Act," as amended, compelling the

Appellants and all persons, firms, associations, and corporations similarly interested and situated to pay in advance said charges are unconstitutional and void, being contrary to and in violation of the Constitution of the State of California.

IX

Prior to the first California Vehicle Act of 1913 was enacted, the Constitution of California provided that the cities were granted the power to issue licenses and charge fees for the use of their streets by motor vehicles and the monies collected were used exclusively for the cost of regulation and maintenance and repair on the streets. The said provisions of said State Constitution are still in full force and effect. That said subdivisions (b) and (c) as aforesaid are unconstitutional and void being contrary to and in violation of the State Constitution prohibiting double taxaton, as well as the Fourteenth Amendment of the Fed- [fol. 63] eral Constitution.

X

The said threatened Acts of the Appellee in enforcing said unconstitutional and void subdivisions (b) and (c) of Section #77 of the "California Vehicle Act," as amended, are illegal, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, and also the Constitution of California.

XI

The lower Court erred in dissolving the said restraining order and denying the application for an interlocutory injunction.

XII

The lower Court erred in granting the motion to dismiss the Bill of Complaint.

XIII

The lower Court erred in denying the application of the appellant to file said amended bill of complaint which had been presented to said Court after the said Court had filed a written opinion.

XIV

The appellants claim that they are entitled to an interlocutory injunction prayed for restraining and enjoining said appellee from enforcing said subdivisions (b) and (c) of Section #77 of said "California Vehicle Act," as amended, as said threatened Acts and the said subdivisions (b) and (c) as aforesaid are unconstitutional and void being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution and also contrary to and in violation of the Constitution of the State of California.

[fol. 64] XV

The appellants pray this Honorable Court to reverse the order and decree of the Lower Court dissolving the restraining order and refusing an interlocutory injunction and granting a motion to dismiss the Bill of Complaint, and dismissing the Bill of Complaint, and further the Appellants pray that the Lower Court shall be directed to enter a final decree declaring the said subdivisions (b) and (c) of said Section #77 of said "California Vehicle Act," as amended, were void and unconstitutional, and the said Appellee, Frank G. Snook, as Chief of Division of Motor Vehicles, be forever enjoined and permanently restrained from enforcing the said illegal, void and unconstitutional subdivisions (b) and (c) aforesaid, and pay into the registry of the Court all of the moneys collected by him under the said subdivisions (b) and (c) of said Section #77 of the "California Vehicle Act," as amended, from the Appellants and all others similarly interested or situated, as aforesaid, and further for allowances, distributions and payments as may be hereafter determined, awarded and decreed, and further for any other and proper relief as this Honorable Court may deem proper and fit in the premises.

Designation of Parts of Record to be Printed

1. Bill of Complaint.
2. Motion for an Interlocutory Injunction, and Affidavit of J. F. Vizzard attached to said motion.
3. Order of Court fixing time for hearing on Motion before three Judges.

[fol. 65] 4. Notice served on Governor, Attorney General, and Frank G. Snook, as Chief of Division of Motor Vehicle, Defendant.

5. Application for Restraining Order and affidavit of J. F. Vizzard.

6. Order granting restraining order.

7. Motion to dismiss the Bill of Complaint.

8. Memo. opinion entered by the Court.

9. Order and Decree entered by Court.

10. Motion to file Amended Bill of Complaint, and the following paragraphs of the proposed amended bill attached to said motion: IV, V, VI, VII, VIII, and IX.

11. Notice served on Defendant for hearing on said Motion.

12. Order and Decree of March 25th, 1929.

13. Assignment of Error.

14. Prayer for Appeal and granting the same.

15. Citation.

16. Names of Solicitors and addresses: W. R. Crawford, 625 North Elm Drive, Beverly Hills, Calif.; J. F. Vizzard, 310 Call Building, San Francisco, Calif.; Edwin C. Ewing, 625 North Elm Drive, Beverly Hills, Calif.

W. R. Crawford, J. F. Vizzard, Edwin C. Ewing, Solicitors for Appellants.

Due service and Receipt of two copies of the above Points relied upon and designation of parts of Record to be printed.

Dated May 3rd, 1929.

U. S. Webb, Attorney General; Frank L. Guerena, Deputy Attorney General, Solicitors for Appellee. H. F.

[fol. 66] [File endorsement omitted.]

Endorsed on cover: File No. 34,202. N. California, D. C. U. S. Term No. 86. Carley & Hamilton, Inc.; Edward Malde, doing business as A. B. C. Transfer & Storage Company; S. Brizzolara, etc., et al., appellants, vs. Frank G. Snook, as Chief of the Division of Motor Vehicles, State of California. Filed May 11, 1929. File No. 34,202.